

Corrected

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1581V

UNPUBLISHED

TODD DURANT,
personal representative of the estate of
JENNIFER DURANT

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 2, 2022

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Guillain-Barre
Syndrome (GBS)

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On October 11, 2018, Jennifer Durant filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Ms. Durant alleges that she suffered from Guillain-Barre Syndrome (“GBS”) as a result of an influenza (“flu”) vaccine administered on September 30, 2015. Petition at 1; Amended Petition at 1; Stipulation, filed at December 1, 2022, ¶¶ 1, 4. Ms. Durant further alleged that the vaccine was administered within the United States, that Ms. Durant sustained the first symptoms of GBS within the time period set forth in the Vaccine Injury Table, that Ms. Durant experienced the residual effects of her GBS for more than six months, and that there has been no prior award or settlement of a civil action for damages on Ms. Durant’s behalf as a result of her condition. Amended Petition at 19-20; Stipulation at ¶¶ 3-7. Ms. Durant passed away while this case was pending, and

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

on August 2, 2022, her husband, Todd Durant, was substituted as Petitioner on behalf of Ms. Durant's estate. ECF No. 85.

On December 1, 2022, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

A lump sum of \$129,100.00 in the form of a check payable to Petitioner as legal representative of the Estate of Jennifer Durant. Stipulation at ¶ 9. This amount represents compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amount for Petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

TODD DURANT, as personal
representative of the estate of
JENNIFER DURANT, deceased

Petitioner,

v.

**SECRETARY OF HEALTH AND
HUMAN SERVICES**,

Respondent.

*
*
*
*
*
*
*
*
*
*
*

No. 18-1581V
Chief Special Master Corcoran

STIPULATION

The parties hereby stipulate to the following matters:

1. Jennifer Durant filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of an influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).¹
2. Ms. Durant received an influenza immunization on September 30, 2015.
3. This vaccine was administered within the United States.
4. Ms. Durant sustained the first symptom or manifestation of the onset of Guillain-Barré Syndrome (“GBS”) within the time period set forth in the Table. Petitioner does not allege that her death was a sequela of her GBS.

¹ Ms. Durant filed an amended petition on September 12, 2019, and while it provided further detail about her case, it did not add any new legal claims. Ms. Durant also passed away while this case was pending, and on August 2, 2022, her husband, Todd Durant, was substituted as petitioner on behalf of Ms. Durant’s Estate.

5. Ms. Durant experienced residual effects of her GBS for more than six months.

6. There is not a preponderance of evidence demonstrating that Ms. Durant's GBS is due to a factor unrelated to vaccination.

7. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Ms. Durant's behalf as a result of her condition.

8. Accordingly, petitioner, in his representative capacity as the legal representative of Ms. Durant's estate, is entitled to compensation under the terms of the Vaccine Act for Ms. Durant's GBS. Therefore a decision should be entered awarding the compensation described in Paragraph 9 of this stipulation.

9. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of **\$129,100.00** in the form of a check payable to petitioner as legal representative of the Estate of Jennifer Durant. This amount represents compensation for all damages that are available under 42 U.S.C. § 300aa-15(a).

10. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

11. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be

expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

12. Payment made pursuant to paragraph 9 and any amounts awarded pursuant to paragraph 10 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

13. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the as the legal representative of the Estate of Jennifer Durant, under the law of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as legal representative of Ms. Durant's estate. Petitioner has provided the Secretary with documentation establishing his appointment as the Personal Representative of the Estate of Jennifer Durant. If petitioner is no longer authorized by a court of competent jurisdiction to serve as legal representative of the Estate of Jennifer Durant at the time a payment pursuant to this Stipulation is to be made, any such payment will be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of Ms. Durant's estate, upon submission of written documentation of such appointment to the secretary.

14. In return for the payments described in paragraphs 9 and 10, petitioner, in his individual capacity, and as Personal Representative of the Estate of Jennifer Durant, on his own behalf and on behalf Ms. Durant's Estate and her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all

demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Ms. Durant resulting from, or alleged to have resulted from, a flu vaccination administered on September 30, 2015, as alleged by petitioner in a petition for vaccine compensation filed on or about October 11, 2018, and an Amended Petition filed on September 12, 2019, in the United States Court of Federal Claims as petition No. 18-1581V.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to the amount of damages, and further, that a change in the items of compensation sought, is not grounds to modify or revise this agreement.

17. All rights and obligations of petitioner in his capacity as Personal Representative of the Estate of Jennifer Durant, shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

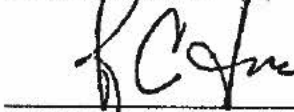
END OF STIPULATION

Respectfully submitted,


PETITIONER:


TODD DURANT

**ATTORNEY OF RECORD FOR
PETITIONER:**


RONALD C. HOMER
Conway Homer, PC
16 Shawmut Street
Boston, MA 02116
Tel: (617) 695-1990
Fax: (617) 695-0880

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


HEATHER L. PEARLMAN
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146


**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

George R.
Grimes -S14

Digitally signed by George R.
Grimes -S14
Date: 2022.11.14 16:45:59 -05'00'

CDR GEORGE REED GRIMES, MD, MPH
Director, Division of Injury
Compensation Programs
Health Systems Bureau
Health Resources and Services
Administration
U.S. Department of Health
and Human Services
5600 Fishers Lane, 08N146B
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


DEBRA A. FILTEAU BEGLEY
Senior Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4181
Email: debra.begley@usdoj.gov

Dated: 11/29/2022